

Attorney Docket No.: **IFF-66 (IFF-0010)**
Inventors: **Bolen and Hiserodt**
Serial No.: **10/671,411**
Filing Date: **September 24, 2003**
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REMARKS

Claims 1-8 are pending in this application. Claims 1-8 have been rejected. Claims 1 and 4 have been amended and claim 9 has been added. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Election/Restriction Requirement Under 35 U.S.C. §102

Claims 1-8 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,880,630. It is suggested that the '630 patent teaches a method of making an extract from the plant *Lycium halimifolium*, wherein the plant is extracted with ethanol and then filtered to obtain the extract solution. It is acknowledged that this reference does not specifically teach that the plant extract contains monomenthyl succinate; however, it is suggested that the reference extract would inherently have to contain all the same components as the claimed extract as the same solvent and extraction steps are disclosed. Applicants respectfully disagree.

The 4,880,630 patent teaches drying and crushing the leaves and green stalks of *L. halimifolium*, steeping the crushed substance for 36 hours in 70% ethanol, and filtering and storing the resulting extract. In contrast, the plant extract of the present invention is obtained by placing plant biomass in a solvent for 10-24 hours and subsequently filtering the extract to remove plant biomass. The resulting plant extract contains between 0.5 and 1000 parts per million monomenthyl succinate. See page 10. The resulting amount of monomenthyl succinate in the composition of the instant composition is neither taught,

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suggested, nor inherent in the teachings of the '630 patent because this reference discloses different extraction conditions (e.g., 36 hours of extraction in 70% ethanol) than those of the instant specification (i.e., extraction in solvent for 10 to 24 hours). Thus, in an effort to more clearly reflect the teachings of the instant specification, Applicants have amended claim 4 to indicate that extraction in solvent is carried out for 10 to 24 hours and amended claim 1 to indicate that the plant extract contains between 0.5 and 1000 parts per million of monomenthyl succinate. Because the '630 patent fails to teach or suggest each and every limitation set forth in amended claims 1 and 4, and claims dependent therefrom, this reference fails to anticipate the instant invention. It is therefore respectfully requested that this rejection be withdrawn.

Claims 1-8 have further been rejected under 35 U.S.C. 102(b) as being anticipated by Derwent English abstract of CN 1174707. It is suggested that CN '707 teaches an extract from Chinese wolfberry (a.k.a. *L. barbarum*) made using a method comprising extraction with ethanol and then filtration to obtain the extract solution. It is acknowledged that this reference does not specifically teach that the plant extract contains monomenthyl succinate; however, it is suggested that the reference extract would inherently have to contain all the same components as the claimed extract as the same solvent and extraction steps are disclosed. Applicants respectfully disagree.

CN '707 teaches a Chinese wolfberry extract obtained by crushing the plant material, adding 95% ethyl alcohol, adding 75% ethyl alcohol, adding water, heating, filtering, adding 50% ethyl alcohol, heating, filtering, and mixing the filtrates. This

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reference discloses different extraction conditions (e.g., multiple ethyl alcohol extractions, heating and filtering steps) than those of the instant specification (i.e., extraction in solvent for 10 to 24 hours) and therefore the resulting extract of CN '707 would not inherently contain between 0.5 and 1000 parts per million of monomenthyl succinate. Accordingly, because CN '707 is silent to the amount of time the plant material is extracted and to the presence and/or amount of monomenthyl succinate in the extract, this reference fails to teach or suggest each and every limitation set forth in amended claims 1 and 4, and claims dependent therefrom, and therefore does not anticipate the instant invention. It is therefore respectfully requested that this rejection be withdrawn.

Claims 1-8 further stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,882,664. It is suggested that the '664 patent teaches an extract from *Mentha piperita* made using a method comprising extraction with ethanol and then filtration to obtain the extract solution. It is acknowledged that this reference does not specifically teach that the plant extract contains monomenthyl succinate; however, it is suggested that the reference extract would inherently have to contain all the same components as the claimed extract as the same solvent and extraction steps are disclosed. Applicants respectfully disagree.

The '664 patent teaches that an extract from *Mentha* sp. can be obtained by adding 50% ethanol solution to dried whole herb, refluxing in a water bath of 80°C for 4 hours, and filtering the extract. This reference discloses different extraction conditions (e.g., extraction in 50% ethanol solution for 4 hours at 80°C)

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than those of the instant specification (i.e., extraction in solvent for 10 to 24 hours) and therefore the resulting extract of the '664 patent would not inherently contain between 0.5 and 1000 parts per million of monomethyl succinate. Because the '664 patent fails to teach or suggest each and every limitation set forth in amended claims 1 and 4, and claims dependent therefrom, this reference does not anticipate the instant invention. It is therefore respectfully requested that this rejection be withdrawn.

II. Conclusion

The Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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